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MUNICIPAL CORPORATIONS—DEFECT IN STREETS—LIABILITY ARISING FROM RUNAWAY ACCIDENTS.—As the plaintiff was driving on a street in the defendant city, his horse became frightened and ran away, without the fault of either plaintiff or defendant. A crosswalk had been built across the street and from four to seven inches above its level, but in the center of the street, and for about one-third of its width, gravel had been dumped on both sides of the walk to enable teams to pass over. Two wheels of plaintiff's carriage struck this walk where there was no gravel, and he was thrown out and injured. The negligence of the municipality having been fixed by the verdict in the trial court, it was *Held*, that the plaintiff could recover. *Meisner v. City of Dillon* (1903), — Mont. —, 74 Pac. Rep. 130.

The question involved in this case has given rise to two opposing lines of decisions. The weight of authority, represented by the states of New York, Pennsylvania, Georgia, Maryland, Missouri, Indiana, Connecticut, New Hampshire, Vermont, Texas, and now by Montana, holds that the city is liable where a horse takes fright, without any negligence on the part of the driver, at some object for which the municipality is not responsible, gets beyond the control of the driver and comes in contact with some object or defect in the road or street which the city has been negligent in not removing or repairing, if the injuries would not have been sustained but for the obstruction or defect. *ELLIOTT ON ROADS AND STREETS*, 615; *BEACH ON CONTRIBUTORY NEGLIGENCE*, 245; *Hunt v. Pownall*, 9 Vt. 411; *Winship v. Enfield*, 42 N. H. 197; *Ring v. Cohoes*, 77 N. Y. 83; *Railroad v. Prescott*, 59 Fed. Rep. 237, 23 L. R. A. 654; and many other cases cited in the notes of above text-books. The other view is upheld by Massachusetts, Maine, Wisconsin, West Virginia, and probably one or two others, leading cases being *Moulton v. Sandford*, 51 Me. 127; *Titus v. Inhabitants of Northbridge*, 97 Mass. 258. None of the cases goes so far, however, as to hold that a city is bound to keep its streets in a safe condition for runaways, but is only required to keep them in a safe condition for ordinary travel. *Ring v. Cohoes*, *supra*; *Perkins v. Fayette*, 68 Me. 152; *Street v. Holyoke*, 105 Mass. 82. But accidents which are likely to happen without the negligence of the driver must be provided against. *Hunt v. Pownall*, *supra*. And in all of the states, where the horse merely shies, or is only momentarily out of the control of the driver, the municipality is liable if injury results from some obstacle or defect in the streets attributable to the negligence of the municipality. *Houfe v. Inhab. of Fulton*, 29 Wis. 296, 9 Am. Rep. 568; *Titus v. Inhab. of Northbridge*, *supra*.

MUNICIPAL CORPORATIONS—LIABILITY FOR ACTS OF OFFICERS—PROSECUTION UNDER VOID ORDINANCE.—Defendant passed a municipal ordinance prohibiting the riding of bicycles on its streets unless a license were procured and a tax of \$1.00 a year paid for such license. The proceeds of the tax were paid into the city treasury for the use of the municipality. Plaintiff was arrested and convicted of violating this ordinance, but on appeal, the ordinance was declared to be void. He now sues the municipality for damages. *Held*, that the action would not lie. *Simpson v. City of Whatcom* (1903), — Wash. —, 74 Pac. Rep. 577.

This case follows the decided weight of authority and is of interest chiefly from the fact that the court refused to follow the lead of the Supreme Court of Kentucky in *McGraw v. City of Marion*, 98 Ky. 673, 47 L. R. A. 593, in departing from the rule that a municipality is not liable for the acts of its police officers even when acting under a void ordinance. In that case the

plaintiff had been arrested and imprisoned under a void ordinance requiring transient traders to take out a license, and a recovery was allowed against the city. The court held that a municipal corporation is liable for the damage done to any person by the acts of its officers in enforcing an unconstitutional ordinance enacted for the sole benefit of the corporation or its citizens. The distinction sought to be raised between the ordinance involved in that case and other police regulations is shadowy and distinctly at variance with other previous American cases. A careful review of the authorities will be found in a note in 47 L. R. A. 593, and also a note in 44 L. R. A. 795. Other authorities supporting the principal case are *DILLON ON MUN. CORP.* 4th ed. 975 *Woodhull v. New York*, 150 N. Y. 450; *Rusher v. Dallas*, 83 Tex. 151; *Blake v. Pontiac*, 49 Ill. App. 543; *Caldwell v. Frumelle*, 57 Kan. 511; *Trescott v. Waterloo*, 26 Fed. Rep. 592; *Bultrick v. Lowell*, 1 Allen 172, 79 Am. Rep. 721.

NEGLIGENCE—TELEGRAPH COMPANIES—LIABILITY FOR LOSS CAUSED BY A MESSAGE SENT BY WIRE-TAPPEERS.—One R, tapped the wire of the defendant company and sent a message to his confederate F, in care of the plaintiff bank. The message stated that W & Sons would honor checks of F to a certain amount. This telegram was shown to the cashier of plaintiff bank, who, before paying any checks to F, sent a message to W & Sons making inquiries. The message was intercepted by R, who sent a reply purporting to be from W & Sons, saying that F's checks were good. Thereupon plaintiff cashed checks of F, to the amount of \$1,200. In an action by the bank, *Held*, telegraph company liable for the loss *Western Union Telegraph Co. v. Uvalde Nat. Bank* (1903), —Tex—, 77 S. W. Rep. 603.

The bank sought to establish the liability of the telegraph company on the ground that the delivery of the fraudulent messages by the company amounted to a representation of their authenticity. This view, however, was repudiated by the court and the holding based on the negligence of the company in not taking sufficient precautions to prevent the perpetration of frauds of this character. The liability of telegraph companies for damages resulting from the delivery of forged messages has been established in a number of cases cited by the court in the principal case, but in each of these there was present the element of negligence of an employee. In holding the company liable in the absence of such negligence, the court has taken an advanced step. No case involving similar facts is found, but in view of the present commercial importance of the telegraph, a high degree of care is demanded in its operation and the holding will probably meet with approval.

PROPERTY FOUND—FINDER'S RIGHTS—TREASURE TROVE.—Plaintiffs, while working on defendants' premises and for them, unearthed a sum of money which had been hidden for a considerable time by an unknown owner. Plaintiffs turned the money over to defendants and now seek to recover the same in an action of trover. *Held*, that the action was maintainable as the finder had a right to the property against all except the owner and, possibly, the state. *Danielson v. Roberts* (1904), —Ore.—, 74 Pac. Rep. 913.

The court merely decides the rights of the finders as against defendants. The distinction between the ordinary rights of a person finding lost property and the case of treasure trove was pointed out, but the court gave it as a dictum that in this country the law of treasure trove has been merged into the law of the finder of lost property. However, the right of the state to claim the property as treasure trove was not determined. See 2 MICHIGAN LAW REVIEW, 299.